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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

SAMUEL O'NEAL HAYES,

Petitioner,

v.

THE SUPERIOR COURT OF EL DORADO COUNTY,

Respondent;

COUNTY OF EL DORADO,

Real Party in Interest.

C039279

(Super. Ct. No. 25857)

In this proceeding to collect child support arrearages, we conclude a Tennessee judgment in a proceeding under the Uniform Reciprocal Enforcement of Support Act (URESA) establishing the amount of arrearages due under a previous California judgment of dissolution is entitled to full faith and credit in a later proceeding brought in California to collect the same arrearages.

In 1976, appellant Samuel O'Neal Hayes (father) and respondent Susan Kay Hayes (mother) were divorced in El Dorado

County, California. The judgment of dissolution ordered father to pay child support for the parties' minor child. In 1990, respondent El Dorado County (the County), which had paid welfare benefits to mother, sent a URESA petition to Tennessee, where father was living, to collect child support arrearages. In 1994, after the minor child had turned 18, the Tennessee court issued its judgment in the URESA proceeding, determining that father owed only a fraction of the arrearages requested.

In October 2000, the County commenced the present proceeding in El Dorado County Superior Court, seeking a new determination of the arrearages owed, notwithstanding the Tennessee judgment. In bifurcated proceedings, the trial court concluded the Tennessee judgment "did not affect or modify" the original support order in the judgment of dissolution and therefore the original support order was "valid and enforceable." On appeal, father contends the County is barred by the full faith and credit clause of the United States Constitution from relitigating the arrearages decided by the Tennessee court. We agree, and treating this appeal from a nonappealable, interlocutory order as a petition for an extraordinary writ, we will direct the trial court to vacate its order and enter a new and different order finding that the Tennessee judgment is entitled to full faith and credit and dismissing the County's motion to collect arrearages.

FACTUAL AND PROCEDURAL BACKGROUND

A judgment dissolving the marriage of father and mother was entered in El Dorado County on January 8, 1976.¹ Mother was granted custody of the parties' minor child, Christopher, who was not yet a year old at the time, and father was ordered to pay \$100 a month in child support.

Around 1980 or 1981, father moved to Tennessee. Around December 1989, when Christopher was 14 years old, he moved to Tennessee to live with father. On September 11, 1990, the County sent a URESA petition to Tennessee to collect welfare arrearages of \$4,942 owed to the County and nonwelfare arrearages of \$75 owed to mother for the period from January 1976 through November 1989.

In May 1991, there was a physical altercation between father and Christopher that led Christopher to run away from father's home. Mother went to Tennessee after receiving a telephone call from Christopher. On May 28, 1991, father filed a petition for custody and injunctive relief in Tennessee. That same day, the Juvenile Court of Tipton County, Tennessee, issued an injunction ordering Christopher to return to father's home.

¹ The stipulation of the parties, as read into the record by the court, states the judgment of dissolution was filed June 8, 1976; however, this appears to have been a misstatement. Mother testified the date of divorce was on or about January 8, 1976, the County's URESA petition sought arrearages for the period beginning January 1976, and the order appealed from refers to the "California order filed 01/08/76." The judgment of dissolution was submitted as an exhibit at trial, but father failed to include it in his appellant's appendix.

According to mother's testimony in this matter, after eight or nine days in Tennessee she returned to California without Christopher. About four days later, however, Christopher took a bus from Tennessee to Sacramento on his own.

On June 1, 1993, the County sent a letter to the Tennessee District Attorney General along with mother's written testimony for the URESA proceeding, in which she claimed \$7,783.55 in welfare arrearages from December 1975 through May 31, 1993. The letter noted that an affidavit of arrears had been sent a week earlier and that the County was "requesting enforcement of arrears and ongoing child support." Christopher turned 18 on June 25, 1993.

On March 9, 1994, the Circuit Court of Tipton County, Tennessee, held a hearing on the URESA petition. At that hearing, father apparently testified that mother had come to Tennessee and taken Christopher back to California in violation of the injunction issued on May 28, 1991.

On April 8, 1994, the Tennessee court entered its order and judgment in the URESA proceeding. The court determined that father should pay \$444.80 in welfare arrearages to the County for the period from 1976 through December 1989. The court determined that no arrearages were owed to mother for the period before May 28, 1991, because she had received direct payments from father, and no arrearages were owed either to the County or to mother for the period after May 28, 1991, because mother violated the Tipton County Juvenile Court's order in removing

Christopher from Tennessee. In its order, the court noted that Christopher was now an adult and no longer in need of support.

From April 1994 through October 17, 2000, there was regular contact between father and the County. The County consistently maintained the Tennessee court's judgment was not binding in California, and father consistently maintained it was binding.

On October 17, 2000, the County commenced the present proceeding by filing a motion to determine that continuing, exclusive jurisdiction over the original support order lay in El Dorado County Superior Court.² Essentially, the County sought to collect the welfare arrearages it contended were still due under the original support order. By agreement of the parties, the trial court would first decide whether the County could obtain a determination of arrearages from the El Dorado County Superior Court notwithstanding the Tennessee judgment. In the event the court concluded that a new determination of arrearages was not barred by the Tennessee judgment, the court would then proceed to determine the amount of the arrearages.

² It appears this proceeding was brought under the Uniform Interstate Family Support Act (UIFSA) (Fam. Code, § 4900 et seq.), which provides that "[a] tribunal of this state that has issued a support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order" as long as certain conditions are met. (Fam. Code, § 4909, subd. (a).) UIFSA was adopted in California in 1997 at the same time URESA was repealed. (*In re Marriage of Amezquita & Archuleta* (2002) 101 Cal.App.4th 1415, 1420; Stats. 1997, ch. 194.)

In May 2001, a hearing was held on the first issue presented by the County's motion. The County contended the original support order in the 1976 judgment of dissolution remained valid and collectible notwithstanding the Tennessee court's determination of arrearages in the URESA proceeding in 1994. Father, on the other hand, contended further litigation of the arrearage issue was barred by the doctrines of res judicata and laches based on the Tennessee judgment and the County's six-year delay in filing its motion to determine arrearages in California.

In an order filed July 10, 2001, the trial court concluded the Tennessee judgment "did not affect or modify" the original support order in the judgment of dissolution and therefore the original order was "valid and enforceable." Father appeals from the order of July 10, 2001.³

³ The order from which father appeals did not determine that he owed any arrearages but instead determined only the "threshold issue of whether or not California could proceed on a determination of arrearages." As such, the July 10, 2001, order is a nonappealable, interlocutory order. (See *In re Marriage of Ellis* (2002) 101 Cal.App.4th 400, 403-404.) "[O]n a purported appeal from a nonappealable order, the appellate court has discretion to treat the appeal as a petition for an extraordinary writ within the appellate court's original jurisdiction." (*Id.* at p. 404.) We construe the present appeal as a writ petition because: (1) both parties agreed in the trial court to the bifurcation that resulted in this interlocutory order; (2) the County has not challenged the appealability of the order and "thus [has] impliedly requested us to rule on the merits"; and (3) a resolution of the present matter in father's favor will render a further trial to determine arrearages unnecessary, thus conserving scarce judicial resources.

DISCUSSION

Although father's argument, made in pro. per., is far from a model of clarity, it appears from father's brief that his primary contention is this: A final determination of how much he owed in child support arrearages for the entire period of Christopher's minority was made by the Tennessee court in 1994 in the URESA proceeding, and the County is barred by the doctrine of res judicata and the full faith and credit clause of the United States Constitution (U.S. Const., art. IV, § 1) from litigating that issue again. For the reasons that follow, we agree.

I

URESА

We begin by providing a brief background on URESA. URESA was reciprocal legislation enacted throughout the United States with the purpose of improving and extending "the enforcement of duties of support and . . . mak[ing] uniform the law with respect thereto." (Former Fam. Code, § 4801; *In re Marriage of Lurie* (1995) 33 Cal.App.4th 658, 670.) Under URESA, civil enforcement of a duty of support was available through two methods: an enforcement action or registration. (*Id.* at p. 664.) We are concerned in this case only with the former method.

As the court explained in *In re Marriage of Lurie, supra*, 33 Cal.App.4th at page 664, a civil enforcement action under URESA "is commenced with the filing of a complaint in the state where the person owed support (the obligee) lives. [Citation.]

That state (the initiating state) then determines whether the obligee is owed a duty of support.^[4] If so, the finding is certified to the responding state, where the duty is sought to be enforced. [Citation.] The obligor is then served with the complaint and the court of the responding state will determine whether a duty of support is owed and if so, how much. The responding court may order the obligor to furnish or reimburse support and subject his or her property to the order."

In determining whether a duty of support was owed, the courts in a civil enforcement action under URESA would use the law of the state "where the obligor was present for the period during which support [wa]s sought." (Former Fam. Code, § 4820.)

Here, in 1990 the County submitted a URESA petition to the El Dorado County Superior Court claiming \$5,017 in arrearages owed by father.⁵ A court commissioner certified that the petition set forth facts from which it could be determined that father owed a duty of support, and the petition was then forwarded to Tennessee. Ultimately, the Tennessee court took action on that petition in 1994 and determined that father owed only \$444.80 in child support arrearages.

⁴ In fact, what the initiating state would do was determine whether the complaint "set[] forth facts from which it [could] be determined that the obligor owe[d] a duty of support." (Former Fam. Code, § 4827.)

⁵ That claim later increased to \$7,783.55.

II

Full Faith and Credit Clause

Article IV, section 1 of the United States Constitution provides: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

"[T]he clear purpose of the full faith and credit clause [is] to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered, so that a cause of action merged in a judgment in one state is likewise merged in every other. . . . Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment and a plaintiff may not for his single cause of action secure a second or a greater recovery."

(*Magnolia Petroleum Co. v. Hunt* (1943) 320 U.S. 430, 439-440 [88 L.Ed. 149].)

The County does not dispute that by its judgment in 1994 the Tennessee court determined all of the arrearages father owed

for the entire period of Christopher's minority.⁶ Thus, the 1994 Tennessee judgment resolved the identical arrearage issue the County seeks to have determined in the present proceeding, and it appears the County is merely seeking to "secure a . . . greater recovery" from a California court than it received from the Tennessee court. The question is whether the County can be permitted to do this under the full faith and credit clause.

III

28 U.S.C. Section 1738

In the exercise of its power under Article IV, section 1 of the federal Constitution, Congress has provided that the judicial proceedings of a state "shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." (28 U.S.C. § 1738, hereafter section 1738.) Thus, ""the judgment of a state court should have the same credit, validity, and effect in every other court in the United States, which it had in the state where it was pronounced."" (*Brinker v. Superior Court* (1991) 235 Cal.App.3d 1296, 1299.)

It appears from our review of Tennessee law that any attempt by the County to relitigate the arrearage issue *in Tennessee* would be barred by the doctrine of res judicata. (See

⁶ The County does claim the issue of interest was "neither raised nor adjudicated in Tennessee." We address that argument below.

Gregory v. Gregory (Tenn.Ct.App. 1990) 803 S.W.2d 242 [res judicata precludes relitigation of arrearage issue decided in URESA proceeding if party asserting res judicata proves issue was in fact previously litigated]; Tenn. Code Ann., § 36-5-101(a)(5) ["Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state"].) Thus, under section 1738, the 1994 judgment must be given res judicata effect in California because it would be given res judicata effect in Tennessee.

The County contends "the subject of interest was neither raised nor adjudicated in Tennessee" and therefore res judicata does not preclude litigation of that issue. The County is mistaken. The sworn written testimony of mother the County transmitted to the Tennessee District Attorney General in 1993 specifically indicated that the claimed arrearage of \$7,783.55 through May 31, 1993 "[i]ncludes interest . . . as provided BY CCP SECTION 688.010(A)." Thus, it appears the issue of interest was before the Tennessee court in the URESA proceeding and was litigated.

In any event, "the rule in [Tennessee is] that a judgment in a former action between the same parties on the same cause of action concludes not only the facts actually litigated but the facts that *might have been* litigated." (*Gregory v. Gregory*, *supra*, 803 S.W.2d 242, 244.) The County fails to show why, even if the interest issue was not litigated in the URESA proceeding,

it could not have been. Accordingly, the doctrine of res judicata applies.

IV

URESA Case Law

The fact that the Tennessee judgment was made in a URESA proceeding does not change our conclusion. The County cites several out-of-state cases for the proposition that an initiating state which issued a child support order is entitled to make its own determination of arrearages owed under the order notwithstanding an intervening arrearage determination by a responding state in a URESA proceeding. We are not persuaded.

A

Banks v. Banks

In *Banks v. Banks* (N.J.Super.A.D. 1987) 534 A.2d 419, a child support order was entered against the father in New Jersey as part of a divorce judgment. (*Ibid.*) "The amounts of arrears owed by [the father] were twice reduced to judgment in [New Jersey] upon [the mother's] motions to enforce litigant's rights, both times with [the father] represented or participating *pro se*: a \$5,768.63 judgment in April 1984 and a \$6,300 judgment in April 1985." (*Ibid.*) In a URESA proceeding later in 1985, a Tennessee court "reduced the total arrears then owed to \$4,639.63 . . . 'due to a period of diminished ability to pay support during unemployment.'" (*Id.* at pp. 419-420.)

In 1986 in New Jersey, the mother obtained a determination of arrearages in a greater sum "notwithstanding the Tennessee URESA order." (*Banks v. Banks, supra*, 534 A.2d at p. 420.) On

appeal, the 1986 arrearage determination was affirmed. The New Jersey court observed that the Tennessee court had "reduced the amount of arrears owed by [the father], notwithstanding the entry of two judgments for arrears in this State which were entitled to full faith and credit in Tennessee." (*Ibid.*)

Banks is distinguishable from this case because the New Jersey courts had previously reduced to judgment the amount of arrearages the father owed, and the Tennessee court was bound to give full faith and credit to those judgments but failed to do so. Here, the California courts had not reduced father's arrearages to judgment before the County initiated its URESA petition. Instead, the County presented the arrearage issue for a determination by the Tennessee court in the first instance. Thus, *Banks* is of no assistance here.

B

State v. Fontenot

In *State v. Fontenot* (La.Ct.App. 1991) 587 So.2d 771, a child support order was entered against the father in Georgia in 1972 as part of a divorce judgment. (*Id.* at p. 772) In 1986, a Louisiana court in a URESA proceeding determined that father owed \$3,900 in arrearages. (*Id.* at pp. 772-773.) In 1989, the Louisiana court determined the father had paid the arrearages in full. (*Id.* at p. 773.)

In the meantime, the mother had initiated an enforcement action in Georgia, and the Georgia court determined the father owed in excess of \$28,000 in arrearages. (*State v. Fontenot, supra*, 587 So.2d at p. 773.) In 1990, the mother sought to

enforce the Georgia arrearage judgment in Louisiana. (*Ibid.*) The Louisiana trial court sustained the father's claim of res judicata, but was reversed on appeal. (*Id.* at pp. 774, 777.) The appellate court concluded the Georgia judgment was entitled to full faith and credit and that if the father "wished to plead the alleged res judicata effect of [the arrearage determination by the Louisiana court], he had the opportunity to do so in the Georgia proceedings. He did not take this opportunity and, therefore, the Georgia judgment may be enforceable in this state."⁷ (*Id.* at p. 777.)

Fontenot is distinguishable from this case because the father in *Fontenot* failed to assert the defense of res judicata when the mother attempted to relitigate in Georgia the arrearage issue already decided in Louisiana. Here, however, father has asserted res judicata as a defense, and the validity of that defense is the question before us.

We also note that the decision in *Fontenot* is inconsistent with California law because by enforcing the Georgia judgment over a previous Louisiana judgment, the Louisiana court gave greater faith and credit to the judgment of another state than to a judgment of its own courts -- a result that has been

⁷ Two members of the five-member court dissented. (*State v. Fontenot, supra*, 587 So.2d at p. 777.) One of the dissenting judges opined that the majority's decision was itself "irreconcilably at odds with th[e] principle of finality" that is one of the purposes of the full faith and credit clause. (*Id.* at p. 778.)

rejected in California. (See *Stuart v. Lilves* (1989) 210 Cal.App.3d 1215, 1221.)

C

Rimsans v. Rimsans

In *Rimsans v. Rimsans* (N.J.Super.A.D. 1992) 618 A.2d 854, a child support order was entered against the father in Michigan in 1975 as part of a divorce decree. (*Id.* at p. 855.) In 1982, the mother and the State of Michigan (which had paid welfare benefits to the mother) initiated a URESA proceeding in New Jersey to collect a total of \$21,750 in arrearages from the father. (*Id.* at p. 856.) The New Jersey court entered a final order determining arrearages in the sum of \$7,000. (*Id.* at pp. 856-857.)

In 1991, the State of Michigan registered the 1975 divorce decree in New Jersey under URESA and once again sought arrearages, including some for the same period the 1982 URESA petition had covered. (*Rimsans v. Rimsans, supra*, 618 A.2d at p. 857.) The New Jersey trial court determined "the action taken by the court in 1982 was in error and did not supersede the original Michigan arrearages order." (*Ibid.*)

On appeal, the appellate court held that the 1982 New Jersey order, from which no appeal had been taken, must prevail over Michigan's "second effort to enforce its 1975 order in New Jersey." (*Rimsans v. Rimsans, supra*, 618 A.2d at p. 859.) The State of Michigan attempted to rely on the "antinullification provision" of URESA, which generally provides that a support order made in a URESA proceeding does not "nullify" an

underlying support order unless specifically provided by the court.⁸ The New Jersey appellate court concluded, however, that the antinullification provision did not indicate a legislative intent "that obligees have the right separately to pursue, in successive actions, both the enforcement and registration remedies provided in URESA." (*Ibid.*) The court concluded "[t]he 1982 order was final and appealable, and is now *res judicata* in this State, even if initially erroneous." (*Id.* at p. 860.)

But for one crucial difference, *Rimsans* would support father's position in this case. Because *Rimsans* involved a second attempt to litigate the arrearage issue *in the responding state*, the court in *Rimsans* did not address whether an action in the initiating state based on the original support order would be barred by an intervening arrearage determination in a URESA action. (See *Rimsans v. Rimsans*, *supra*, 618 A.2d at pp. 860-861.) Accordingly, *Rimsans* is of little assistance in addressing the full faith and credit issue before us.

⁸ In 1994, the "antinullification provision" of URESA was codified in California at Family Code section 4840, as follows: "A support order made by a court of this state pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar provision of law, regardless of priority of issuance, unless otherwise specifically provided by the court."

McMath v. McMath

In *McMath v. McMath* (Mich.Ct.App. 1989) 436 N.W.2d 425, a child support order was entered against the father in Michigan in 1980 as part of a divorce judgment. (*Id.* at p. 426.) In 1984, the mother brought a URESA proceeding in Tennessee to reduce some arrearages to a money judgment. (*Id.* at p. 427.) (Other arrearages had already been reduced to judgment in Michigan.) The Tennessee court determined arrearages through September 15, 1983, and in doing so awarded the father an abatement of \$5,200 against his arrearage. (*Ibid.*)

In 1985, the Tennessee court concluded its 1984 arrearage judgment had been paid in full. (*McMath v. McMath, supra*, 436 N.W.2d at p. 427.) The father filed a petition in Michigan for an order declaring the arrearages fully paid in accordance with the Tennessee court's order. (*Ibid.*) The Michigan trial court entered such an order, but was reversed in part on appeal. (*Id.* at pp. 427, 430.) The appellate court concluded that to the extent the Tennessee court determined the arrearage due under the original Michigan judgment and credited the father with payments he had made, the Tennessee court had not exceeded its jurisdiction under URESA. (*Id.* at p. 430.) The Michigan appellate court concluded, however, that the Michigan trial court was "not bound by the abatement granted to [the father] in Tennessee when calculating the arrearage due under the original judgment of support." (*Ibid.*) In support of its decision, the appellate court relied on the "antinullification provision" of

URESA, which generally provides that a support order made in a URESA proceeding does not “nullify” an underlying support order unless specifically provided by the court. (*Id.* at pp. 429-430.)

McMath supports the County’s position in this case; however, we do not find *McMath* persuasive because the court failed to address the full faith and credit clause.⁹ The court’s conclusion that the Tennessee court’s determination of arrearages did not “nullify” the original Michigan divorce judgment does not answer the question of whether (and if so, why) an arrearage determination made by a court of one state in a URESA proceeding is to be denied full faith and credit in a subsequent proceeding in another state.

In our view, an adjudication of the amount of child support arrearages owed for any given period under a support order does not *nullify* that order. To “nullify” something is “to make [it] legally null and void,” “to make [it] of no value or consequence.” (Merriam-Webster’s Collegiate Dict. (10th ed. 2001) p. 795.) An adjudication of arrearages actually *gives effect* to the underlying support order, enforcing it according to its terms, subject to any applicable defenses, of course. Thus, the antinullification provision of URESA neither compels

⁹ A similar flaw appears in *In re Marriage of Griffey* (Iowa 2001) 629 N.W.2d 832, where the Iowa Supreme Court held that a Texas order in a URESA proceeding determining arrearages of \$12,000 did not preclude the mother from collecting a greater amount of arrearages in a later proceeding in Iowa, the initiating state.

nor allows the California courts to deny full faith and credit to the Tennessee judgment.

E

In re Marriage of Lurie

Although the County did not bring it to our attention, we are aware of a passage from *In re Marriage of Lurie, supra*, that states "our courts consider adoption of URESA or similar reciprocal legislation to be in effect a waiver of th[e] doctrine" of full faith and credit. (33 Cal.App.4th at p. 669.) A proper understanding of that passage, however, only confirms our conclusion that the Tennessee judgment for arrearages is entitled to full faith and credit in this proceeding.

In *Lurie*, a child support order was entered against the father in New York in 1984 as part of a judgment of dissolution. (*In re Marriage of Lurie, supra*, 33 Cal.App.4th at p. 661.) Under that judgment (and the law of New York), the father was obligated to pay \$375 in child support per child per month until each child reached the age of 21. (*Id.* at pp. 661-662.)

In 1992, the mother registered the New York judgment in California under URESA. (*In re Marriage of Lurie, supra*, 33 Cal.App.4th at p. 662.) A California trial court determined that under URESA's choice of law principles, the father's support obligations would terminate when each child turned 18, consistent with California law. (*Id.* at p. 663.)

On appeal, the mother contended that under the full faith and credit clause, the California courts were required to adhere to the terms of the New York judgment and order support payable

until each child turned 21. (*In re Marriage of Lurie, supra*, 33 Cal.App.4th at p. 663.) The appellate court rejected that argument, instead agreeing with the trial court that under URESA's choice of law provision,¹⁰ the law of California, rather than the law of New York, applied in determining the age to which support would be ordered in a URESA proceeding in California. (*Id.* at pp. 663-670.) It was in this context that the court observed "our courts consider adoption of URESA or similar reciprocal legislation to be in effect a waiver of th[e] doctrine" of full faith and credit. (*Id.* at p. 669.)

Lurie stands for the proposition that when ordering child support *prospectively* in a URESA proceeding, the court of the responding state applies its own laws (assuming the obligor is present in that state) rather than the laws of the initiating state. In this respect, URESA is a waiver of the full faith and credit doctrine, because the original support order made by the initiating state is *not* entitled to be given the same effect in the responding state that it would be given in the initiating state -- which is what the full faith and credit clause would otherwise compel. (See § 1738) Instead, the responding state

¹⁰ URESA's choice of law provision was codified in former Family Code section 4820, as follows: "Duties of support applicable under this chapter are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown."

can make its own child support order addressing the obligor's future support obligations under its own laws.

With respect to *past* support obligations, however, the full faith and credit clause remains applicable. This point is made clear by the *Lurie* court's discussion of *In re Marriage of Taylor* (1981) 122 Cal.App.3d 209, to which we now turn our attention.

F

In re Marriage of Taylor

In *Taylor*, a child support order was entered against the father in 1972 in Missouri as part of a divorce judgment. (*In re Marriage of Taylor, supra*, 122 Cal.App.3d at pp. 211-212.) In 1979, the mother registered the Missouri judgment in California. (*Id.* at p. 212.) In responding to the mother's claim for arrearages, the father "claimed that he was not obligated to pay for any child over the age of 18 years and that any such payment made by him should be credited against any remaining obligation of child support." (*Ibid.*) As the court explained in *Lurie*, "[i]n short, the [father] wanted to invoke California law as to past payments already made under the Missouri decree and apply those payments to offset his future obligations under the converted California judgment." (*In re Marriage of Lurie, supra*, 33 Cal.App.4th at p. 667.)

On appeal, the appellate court rejected the father's argument, finding it "significant that we are dealing exclusively with the accrued payments and not with future payments under the support order." (*In re Marriage of Taylor*,

supra, 122 Cal.App.3d at p. 214.) The court held that the Missouri judgment was entitled to full faith and credit with respect to any arrearages accrued under that judgment. (*Id.* at pp. 214-215.)

In distinguishing *Taylor*, the court in *Lurie* specifically relied on the fact that *Taylor* involved arrearages, while *Lurie* did not. (*In re Marriage of Lurie, supra*, 33 Cal.App.4th at p. 668.) Only after noting that arrearages were not involved in the case before it did the court in *Lurie* make its observation about adoption of URESA constituting a waiver of the full faith and credit doctrine. (*Id.* at p. 669.)

Lurie and *Taylor* do not stand for the proposition that the adoption of URESA constituted a wholesale waiver of the full faith and credit doctrine. Neither *Lurie* nor *Taylor* supports the proposition that an arrearage issue litigated in the court of a responding state in a URESA proceeding may be adjudicated again in a subsequent proceeding in the initiating state simply because the support obligee does not like the result of the adjudication in the URESA proceeding. In fact, though not directly on point, *Taylor* supports the opposite proposition -- that an adjudication of child support arrearages is entitled to full faith and credit and not subject to relitigation.

V

Full Faith and Credit for Child Support Orders Act

Although it appears section 1738 resolves the issue in this case, there is another federal statute that must be considered -- the Full Faith and Credit for Child Support Orders Act

(FFCCSOA) (28 U.S.C. § 1738B). The FFCCSOA was signed into law in October 1994 (*In re Marriage of Comer* (1996) 14 Cal.4th 504, 518), shortly after the Tennessee judgment was entered. The FFCCSOA specifies that "[t]he appropriate authorities of each State-- [¶] (1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and [¶] (2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i)." (28 U.S.C. § 1738B(a).) A "child support order" is "a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum," and "child support" means "a payment of money, continuing support, or arrearages . . . for the support of a child." (*Id.* § 1738B(b).) The FFCCSOA further provides that "[a] court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order." (*Id.* § 1738B(d).) Generally, subsections (e) and (f) allow a state to modify a child support order made by another state only if the other state is no longer the residence of the child or any individual contestant or if each individual contestant has consented in writing for the new state to modify the order and assume continuing, exclusive jurisdiction over the order. "[M]odification" means a change in a child support order that

affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.” (*Id.* § 1738B(b).)

The County contends the FFCCSOA supports its position that it can seek a determination of arrearages from the El Dorado County Superior Court notwithstanding the Tennessee judgment that already determined those arrearages. According to the County, the Tennessee court had no power under the FFCCSOA to modify the original support order in the 1976 judgment of dissolution because California had continuing, exclusive jurisdiction over that order and because the individual contestants did not consent in writing to Tennessee assuming continuing, exclusive jurisdiction over the order. It follows, the County contends, that because the Tennessee court had no power to modify the original support order, the original order remains in effect and is enforceable in California notwithstanding the Tennessee judgment.

We disagree with the County that the FFCCSOA supports its position. The County’s argument rests on the dual premises that (1) the Tennessee judgment modified the original support order; and (2) that it did so in violation of the FFCCSOA. We do not agree with either premise.

First, the Tennessee court’s determination of arrearages did not modify the underlying support order. The original support order was prospective only, directing father to pay \$100 per month for Christopher’s support. The Tennessee judgment did not alter that ongoing support obligation; indeed, it could not

have, because by the time of the hearing in Tennessee on the URESA petition, Christopher had already reached the age of majority and no longer qualified for ongoing child support under the law of Tennessee or California.¹¹ (*Garey v. Garey* (Tenn. 1972) 482 S.W.2d 133, 135; Fam. Code, § 3901, subd. (a).) Thus, all the Tennessee court could do, and did do, was determine what child support arrearages were owed *under* the original support order. A determination of what arrearages are owed under a support order does not constitute a modification of the underlying order, even under the FFCCSOA, because the arrearage determination does not change the amount, scope, or duration of the underlying order.

We recognize that the Tennessee judgment awarded the County only a fraction of the total amount of arrearages it claimed were due under the original support order -- specifically, only \$444.80 out of \$7,783.55. That does not mean, however, that the Tennessee court *modified* the underlying support order. Rather, as the trial court recognized, it appears the Tennessee court found the County's recovery of the majority of the arrearages it claimed was barred by some sort of equitable defense based on mother's removal of Christopher from Tennessee in violation of the injunction issued by the Tennessee juvenile court. Thus,

¹¹ Christopher testified at the hearing in this matter that he left high school a couple of months before he was due to graduate in May or June 1993. Accordingly, he was not entitled to continued support beyond the age of 18 under California law. (Fam. Code, § 3901, subd. (a).)

rather than *modifying* the original support order in the 1976 judgment of dissolution, the 1994 Tennessee judgment *enforced* that support order, albeit only partially because of a perceived bar to total enforcement.

Whether the Tennessee court erred in barring recovery of some of the arrearages the County claimed is not for us to decide.¹² (See *Bank of America v. Jennett* (1999) 77 Cal.App.4th 104, 118 ["As long as the sister state court had jurisdiction over the subject matter and the parties, a sister state judgment is entitled to full faith and credit 'even as to matters of law or fact erroneously decided'"].) For our purposes, what is significant is that the Tennessee court's determination of arrearages did not *modify* the underlying support order.

¹² We note that in *Rutledge v. Barrett* (Tenn. 1991) 802 S.W.2d 604, the Tennessee Supreme Court held that a 1987 amendment to the Tennessee child support statute (Tenn. Code Ann. § 36-5-101) "prevents both retroactive modification of child support orders *and* the interposition of traditional equitable defenses to the enforcement of such orders." (*Rutledge v. Barrett, supra*, 802 S.W.2d at p. 605, *italics added*.) In *Rutledge*, the father had sought to avoid liability for \$27,100 in child support arrearages for three children based on the equitable defense of unclean hands, among others, because mother had allegedly prevented him from exercising his visitation rights. (*Id.* at pp. 605, 607.) At the time of the judgment against him, one of the three children was still a minor. (*Id.* at p. 605.)

The present case is distinguishable from *Rutledge* both because Christopher was no longer a minor when the Tennessee court entered its judgment determining arrearages and because mother allegedly violated a juvenile court injunction in removing Christopher from father's custody in Tennessee. Whether those differences might have justified a different result than in *Rutledge* is an issue we have no occasion, and no basis on which, to decide.

Even if we were to conclude otherwise, however, it would not assist the County's argument under the FFCCSOA. As previously noted, the County's argument rests on the premise that the Tennessee judgment modified the original support order *in violation of the FFCCSOA*. When the Tennessee court made its arrearage determination, however, the FFCCSOA had not yet been enacted. The Tennessee judgment was entered in April 1994. The FFCCSOA was not signed into law until October 1994. (*In re Marriage of Comer, supra*, 14 Cal.4th at p. 518.)

There is a statement in *In re Marriage of Lurie, supra*, 33 Cal.App.4th at page 673, that the FFCCSOA "operate[s] retroactively." What the *Lurie* court meant, however, was that because Congress did not specify an effective date for the FFCCSOA, the law took effect "upon signature by the President and appl[ied] . . . during the pendency of an appeal." (*Ibid.*) Thus, the FFCCSOA applied to any case, like *Lurie*, that was pending on appeal when the statute was enacted.

Here, there is nothing in the record indicating the Tennessee judgment was ever appealed. Therefore, that judgment was final before the FFCCSOA ever took effect, and the Tennessee court's actions in entering that judgment cannot be determined *in this proceeding* to have violated a law that was not even in effect at the time the court made its decision. Thus, the County's claim that the 1976 judgment of dissolution is still enforceable in California because the Tennessee court's 1994 arrearage judgment violated the FFCCSOA fails.

The question still remains, however, what effect the California courts are required to give the Tennessee judgment under the FFCCSOA in this proceeding. Because the 1994 Tennessee judgment requires the payment of child support arrearages in a lump sum, it qualifies as a "child support order" under the FFCCSOA, and therefore California is required to enforce that judgment according to its terms, so long as the judgment was made consistently with the FFCCSOA. (28 U.S.C. § 1738B(a)(1).) As we read that rather confusing statute, the Tennessee judgment was made consistently with the FFCCSOA if:

- (1) the Tennessee court (a) "ha[d] subject matter jurisdiction to hear the matter and enter such an order" and (b) "ha[d] personal jurisdiction over the contestants"; and
- (2) "reasonable notice and opportunity to be heard [was] given to the contestants." (*Id.* § 1738B(c).)

We do not understand the County to argue that the Tennessee court lacked either subject matter jurisdiction over the issue of arrearages arising from the 1976 judgment of dissolution or personal jurisdiction over the contestants. By initiating the civil enforcement proceeding under URESA in Tennessee, the County necessarily recognized the Tennessee court's power to adjudicate the matter.

The County does argue that "the action of the [Tennessee] court was beyond the scope of the petition" because the petition "did not request Tennessee to set the arrears." We find this argument specious. The URESA petition specifically sought the collection of arrearages due under the 1976 judgment of

dissolution.¹³ By soliciting the services of the State of Tennessee under URESA to collect those arrearages, the County necessarily authorized the Tennessee courts to determine how much, if anything, father owed in arrearages. The Tennessee court was under no obligation to blindly accept the County's representation in its petition of the amount of arrearages due.

Under the civil enforcement provisions of URESA that were in effect in Tennessee in 1994, "[a]ll duties of support, including arrearages, [we]re enforceable by petition." (Former Tenn. Code Ann. § 36-5-209, subd. (a).) Furthermore, it was the role of the court in the responding state to determine whether a duty of support existed. (See Former Tenn. Code Ann. § 36-5-220, subd. (a) ["If the court of the responding state finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order"].) In making that determination, a duly certified petition from the initiating state "create[d] a presumption of the truthfulness of the facts alleged therein and prima facie evidence of the liability of the respondent and

¹³ The original URESA petition from 1990 specified that is was "for arrears only." The letter from the County in 1993 that accompanied mother's testimony in the proceeding did indicate the County was "requesting enforcement of arrears *and ongoing child support*." (Italics added.) By the time the matter was adjudicated, however, Christopher had reached the age of majority and no ongoing support could be ordered. Accordingly, the only matter presented to the Tennessee court for decision was the issue of arrearages.

. . . shift[ed] the burden of proof to such respondent."

(Former Tenn. Code Ann. § 36-5-219, subd. (b).)¹⁴

Under the foregoing provisions, in requesting that the Tennessee court collect support arrearages from father under URESA, the County necessarily empowered the Tennessee court to determine whether father in fact owed a duty to pay support arrearages and to determine the extent of that duty, if any. Thus, the County's argument that it did not "request[] Tennessee . . . to set the arrears amount" is meritless.

With respect to whether "reasonable notice and opportunity to be heard [was] given to the contestants," the County contends there is no evidence that it or mother "were given notice of the hearing which resulted in the reduction of accrued arrears." This argument fails as well. Under Tennessee law, the district attorney general was charged with enforcing the URESA petition on behalf of the out-of-state petitioner. (Former Tenn. Code Ann. § 36-5-211.) From the face of the 1994 judgment, it appears an assistant district attorney represented mother and the County at the hearing. Furthermore, as previously noted, under Tennessee law the facts stated in the petition were presumed true and established a prima facie case of liability against father. Also, before the hearing, the County transmitted to the Tennessee District Attorney General an

¹⁴ This statute was held unconstitutional in *State ex rel. Dept. of Social Services v. Wright* (Tenn. 1987) 736 S.W.2d 84, but only with respect to "an adjudication of paternity under URESA." (*Id.* at p. 87.)

affidavit of arrears and mother's sworn written testimony. In light of these facts, we reject the County's complaint that it was denied reasonable notice and an opportunity to be heard.

We conclude the 1994 Tennessee judgment was made consistently with the requirements of the FFCCSOA because the Tennessee court had personal and subject matter jurisdiction and the County had reasonable notice and an opportunity to be heard. Accordingly, under the general rule of the FFCCSOA, California courts must enforce the Tennessee judgment according to its terms. (28 U.S.C. § 1738B(a)(1).)

Our conclusion is consistent with the congressional findings and declaration of purposes underlying the FFCCSOA. One of the problems Congress sought to address by enacting the FFCCSOA was "the excessive relitigation of cases and . . . the establishment of conflicting orders by courts of various jurisdictions, resulting in confusion, waste of judicial resources, disrespect for the courts, and a diminution of public confidence in the rule of law." (Pub.L. No. 103-383 (Oct. 22, 1994) 108 Stat. 4064.) Accordingly, one of the express purposes of the FFCCSOA was "to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders." (*Ibid.*)

Thus, our conclusion that the County is not entitled to relitigate in California the arrearage issue previously adjudicated by the court in Tennessee not only comports with the language of the FFCCSOA, but honors the congressional intent behind the statute.

DISPOSITION

The appeal from the order filed July 10, 2001, is dismissed as from a nonappealable, interlocutory order. Let a peremptory writ of mandate issue, directing the trial court to vacate its order of July 10, 2001, and enter a new and different order finding that the Tennessee judgment is entitled to full faith and credit and dismissing the County's motion to collect arrearages. The parties shall bear their own costs. (Cal. Rules of Court, rule 27(a)(4).)

_____, J.
ROBIE

We concur:

_____, Acting P.J.
SIMS

_____, J.
RAYE